

Marilyn Moon, Ph.D.
CHAIR



Rex W. Cowdry, M.D.
EXECUTIVE DIRECTOR

MARYLAND HEALTH CARE COMMISSION

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MARYLAND HEALTH CARE COMMISSION

Thursday, February 19, 2009
Minutes

Chair Moon called the public meeting to order at 12:40 p.m.

Commissioners present: Conway, Falcone, Krumm, Moore, Olsen, Ontaneda-Bernales, Todd, and Worthington. Commissioner Petty participated via teleconference.

A motion to adjourn to closed session to consult with counsel to obtain legal advice about a legal matter was made by Commissioner Worthington, seconded by Commissioner Moore and unanimously approved. Commissioner Ontaneda-Bernales recused herself from participation in the closed session. Commissioner Krumm did not participate in the vote to close, or in the closed session. The meeting was closed pursuant to State Government Article §10-508(a)(7), which provides that a session may be closed to obtain the advice of counsel. The Commission adjourned to the closed session at 12:42 p.m. Persons present during the closed session were: Marilyn Moon, Chair; Commissioners Conway, Falcone, Moore, Olsen, Petty (by teleconference), Todd, and Worthington; Commission staff Rex Cowdry, Pam Barclay, Dolores Sands, Bruce Kozlowski, and David Sharp; and, Suellen Wideman, Assistant Attorney General. The Commissioners discussed pending litigation with counsel. The closed session ended at 1:23 p.m. and the Commissioners returned to open session at 1:25.

ITEM 1.

Approval of the Minutes

Commissioner Ontaneda-Bernales made a motion to approve the minutes of the December 18, 2008 meeting of the Commission and the minutes from the February 9, 2009 special public meeting conducted via conference call, which was seconded by Commissioner Olsen, and unanimously approved.

ITEM 2.

Update of Activities

Rex Cowdry, M.D., Executive Director, said that staff provided the Commission with an update on the Health Insurance Partnership. He said that, despite staff's outreach efforts, the take-up has been slow. Dr. Cowdry also briefed the Commission on the budget recommendations.

Bruce Kozlowski, Director of the Center for Health Care Financing and Policy, said that the Nursing Home Family Survey data collection ended in January, and a presentation on the survey will be presented to the Commission in March.

Pam Barclay, Director of the Center for Hospital Services, introduced and welcomed Susan Myers to the Center for Hospital Services. She said Ms. Myers has Masters degrees in Social and Public Policy, and in Public Health. Ms. Myers will be reporting to Paul Parker within the Acute Care Hospital Policy and Planning Division.

ITEM 3.

ACTION: Renewal of Primary Percutaneous Coronary Intervention (PCI) Services Wavier

- **Frederick Memorial Hospital (Docket No. 08-10-0036WR)**

Pam Barclay presented the recommendation on Frederick Memorial Hospital's (FMH) request for a two-year waiver that would allow the Hospital to continue to provide primary percutaneous coronary intervention services without on-site cardiac surgery services. Ms. Barclay noted that the Commission issued one-year waiver to the Hospital in March 2007, with conditions. After FMH met the conditions, the Commission approved initiation of the FMH primary PCI program effective March 14, 2008. In order to retain the waiver, FMH applied to the Commission on December 12, 2008 for renewal and is seeking a two-year primary PCI waiver. She stated that Commission staff had reviewed FMH's application and data regarding the Hospital's provision of primary PCI services from March 2008 through December 2008. Ms. Barclay noted that, in this 9-month period, FMH had provided pPCI to ninety patients, with a door-to-balloon of 120 minutes or less in 95.7% of cases, well exceeding the required standard. She stated that the Executive Director recommended that the Commission issue a two-year npPCI waiver to Frederick Memorial Hospital. Commissioner Todd made a motion to issue a two-year waiver that permits Frederick Memorial Hospital to provide primary percutaneous coronary intervention services without on-site surgery services, which was seconded by Commissioner Conway, and unanimously approved. Commissioner Ontaneda-Bernales recused herself from consideration of this matter.

ACTION: Frederick Memorial Hospital is hereby granted a two-year primary PCI waiver.

- **Washington County Hospital (Docket No. 08-21-0037WR)**

Pam Barclay presented the recommendation on Washington County Hospital's (WCH) request for a two-year waiver that would allow the hospital to continue to provide primary percutaneous coronary intervention services without on-site cardiac surgery services. Ms. Barclay noted that the Commission issued one-year waiver to WCH in March 2007, with conditions. She said that the Commission found that the Hospital had met the conditions and approved initiation of the WCH primary PCI program effective March 15, 2008. In order to retain the waiver, WCH applied to the Commission on December 12, 2008 for renewal and is seeking a two-year primary PCI waiver. She stated that Commission staff had reviewed the Hospital's application and data regarding its provision of primary PCI services from March 2008 through December 2008. Ms. Barclay noted that, in this 9-month period, WCH had provided pPCI to sixty patients, with a door-to-balloon of 120 minutes or less in 93.8% of cases, well exceeding the required standard. She stated that the Executive Director recommended that the Commission issue a two-year npPCI waiver to the Hospital. Commissioner Krumm made a motion to issue a two-year waiver that permits Washington County Hospital to provide primary percutaneous coronary intervention services

without on-site surgery services, which was seconded by Commissioner Todd, and unanimously approved. Commissioner Ontaneda-Bernales recused herself from consideration of this matter.

ACTION: Washington County Hospital is hereby granted a two-year primary PCI waiver.

ITEM 4.

ACTION: COMAR 10.25.10 – Maryland Trauma Physician Services Fund

Karen Rezabek, Health Policy Analyst, presented proposed regulations that would implement the changes to the Maryland Trauma Physician Services Fund, which became effective July 1, 2008. Ms. Rezabek briefed the Commission on the statutory changes to the Trauma Fund. Commissioner Krumm made a motion to adopt the regulations as proposed, which was seconded by Commissioner Petty and unanimously approved.

ACTION: COMAR 10.25.10 – Maryland Trauma Physician Services Fund – Adopt as Proposed Permanent Regulations is hereby APPROVED.

ITEM 5.

ACTION: Certificate of Need

- **Lorien LifeCenter-Elkridge (Docket No. 08-13-2246)**

Lorien LifeCenter, located in Elkridge, applied for a Certificate of Need to add four additional nursing home beds to its approved-but-unbuilt 60-bed comprehensive care facility that is under development in Howard County. Paul Parker, Chief, Certificate of Need, presented the staff recommendation. Mr. Parker said the nursing home component of this project will account for 28,579 square feet of an 85,151 building. He noted that the project is planned to contain 54 assisted living units in its first phase of construction with a future second phase planned for up to 43 additional assisted living units. Mr. Parker said the nursing home component is estimated to cost \$7,826,273, which is a slight reduction in the cost estimated in 2007 for the original 60-bed facility. Mr. Parker said staff recommended that the proposed project be approved, subject to the same conditions applied to the original CON. Commissioner Falcone made a motion to accept the staff recommendation, which was seconded by Commissioner Todd and unanimously approved. Commissioner Ontaneda-Bernales recused herself from consideration of this matter.

ACTION: Certificate of Need for Lorien LifeCenter-Elkridge is hereby APPROVED, subject to the same conditions applied to the original CON.

- **Johns Hopkins Bayview Medical Center (Docket No. 08-24-2289)**

Johns Hopkins Bayview Medical Center applied for a Certificate of Need to add four operating rooms in renovated space at the hospital. Joel Riklin presented the staff recommendation. Mr. Riklin said the proposed project also includes reconfiguration of the pre- and post-operative and support areas for surgical services and an upgrade to the air handling equipment for the surgical area. He said the 21,259 gross square feet of the existing building space will be renovated and 1,495 gross square feet are allotted for new construction. Mr. Riklin said the Hospital will use all four operating rooms as mixed use and

general purpose rooms. He said the project cost is estimated at \$24,352,934 and will be funded through the sale of \$12.2 million in bonds, \$11.6 million in cash, and a State grant of \$560,000. Mr. Riklin said staff recommended that the proposed project be approved, with the condition that any future rate adjustment sought by Johns Hopkins Bayview Medical Center from the Health Services Cost Review Commission related to the depreciation expenses of this project must be limited to the depreciation on a maximum of \$22,327,199. No rate adjustment may be sought for non-capitalized interest expenditures associated with this project. Commissioner Falcone made a motion to accept the staff recommendation, which was seconded by Commissioner Todd and unanimously approved. Commissioners Krumm and Ontaneda-Bernales recused themselves from consideration of this matter.

ACTION: Certificate of Need for Johns Hopkins Bayview Medical Center is hereby APPROVED, subject to the condition that any future rate adjustment related to the depreciation expenses of this project must be limited to the depreciation on a maximum of \$22,327,199 and that no rate adjustment may be sought for non-capitalized interest expenditures associated with this project.

ITEM 6.

ACTION: Legislative Update and Bill Positions

Rex Cowdry, Executive Director, and Nicole Stallings, Chief, Government Relations and Special Projects, provided an update on the 2009 legislative session and provided the staff recommendation on specific bills for action.

- **HB 4 – Small Business Health Insurance Stimulus Act**

Ms. Stallings said HB 4 as amended would expand the maximum firm size eligible criteria in the Health Insurance Partnership from 9 to 19. She said it would also clarify the method carriers must follow in calculating an employee participation rate to assure the individuals with coverage under the Medicaid, Medicare, or TriCare programs are excluded from the calculation. Staff recommended supporting HB 4, as amended. Commissioner Conway made a motion to approve the staff recommendation, which was seconded by Commissioner Todd and unanimously approved.

ACTION: HB 4 – Small Business Health Insurance Stimulus Act – Staff Recommendation to Support as Amended, is hereby APPROVED.

- **SB 638 – Bona Fide Wellness Programs**

Ms. Stallings said SB 638 brings Maryland law in accordance with HIPAA, allowing incentives based on health outcomes but providing the HIPAA protections. Staff recommended supporting SB 638. Commissioner Ontaneda-Bernales made a motion to approve the staff recommendation, which was seconded by Commissioner Krumm and unanimously approved.

ACTION: SB 638 – Bona Fide Wellness Programs – Staff Recommendation to Support, is hereby APPROVED.

- **SB 637 – Health Insurance – Small Group Regulation - Modifications**

Dr. Rex Cowdry said SB 637 proposes the following modifications to the small group market: removes the floor in the standard plan; changes the rating bands from +40%/-50% to +/-65% and introduces health status as a rating factor on entry; requires the Commission to publish small group premium information

on its website; and requires the Commission to study options to implement value-based health care services. Staff recommended supporting this legislation with amendments. Dr. Cowdry said this legislation incorporates many of the options offered in the Commission's December 2007 report prepared by Mercer entitled, *Options Available to Reform the Comprehensive Standard Health Benefit Plan (CSHBP) As Required Under HB 579*, and believes this proposed legislation can be modified in a way that is beneficial to both the carriers seeking flexibility and the small businesses covered under the CSHBP. Staff is recommending that the bill be amended to require the Commission, in consultation with the Maryland Insurance Administration, to issue regulations establishing criteria for approval of riders that decrease plan benefits. Staff is also recommending a more modest increase in the allowed ratio between the oldest and youngest groups combined with a more gradual expansion to the rate bands, such as a three-year transition to +55%, in order to soften the impact on older groups. Finally, staff is recommending an amendment to clarify that the 10% adjustment for health status would apply only to groups new to the small group market and would be phased out based on the length of continuous coverage in the small group market rather than the length of continuous coverage in the specific plan or with the specific carrier. A discussion ensued regarding the specific provisions of the bill that staff identified as areas where amendments were needed. Commissioner Worthington commented that the dramatic increase in the rate band could force some small business owners to only hire younger individuals. Staff agreed to modify the position paper to emphasize the impact of the increased rating bands on the hiring of older individuals. Commissioner Krumm made a motion to approve the staff recommendation to support SB 637 with amendments, provided that staff revise the position statement as directed by the Commission. This motion was seconded by Commissioner Conway and unanimously approved.

ACTION: SB 637 – Health Insurance – Small Group Regulation - Modifications - Support SB 637 with amendments, provided that staff revise the position statement as directed by the Commission is hereby APPROVED.

- **SB 515 – Healthy Maryland Program**

Dr. Rex Cowdry said SB 515 restructures the non-group (individual) health insurance market in Maryland by creating a modified community-rating system, which would create the Healthy Maryland Program whose Board would: 1) develop a single benefit plan that would be the only plan sold to individuals in Maryland; 2) establish the price of the coverage; 3) establish a “play or pay” requirement on employers; 4) establish an individual mandate; 5) provide premium subsidies for lower income individuals; and 6) finance the Program from a variety of sources, including averted uncompensated care and savings resulting from the plan design. Premiums would be modified community rated. Dr. Cowdry said, the Commission strongly supports efforts to increase access to affordable health care coverage, but has several concerns regarding the approach taken in SB 515 which is why staff recommended opposing this legislation. Commissioner Todd made a motion to approve the staff recommendation, which was seconded by Commissioner Conway and unanimously approved.

ACTION: SB 515 – Healthy Maryland Program – Staff Recommendations to Oppose, is hereby APPROVED.

- **SB 799 – Health Care Facilities – Certificate of Need – Hospitals**

Dr. Cowdry said that SB 799 is an emergency bill that would require the Commission to docket and conduct a comparative review of applications for development and establish a new general hospital in a jurisdiction under certain circumstances. Dr. Cowdry said staff recommended opposing this legislation. He said the Commission has a well-established process for consideration CON applications and provides a review scheduled that is well-known to parties involved. He noted that it undermines the integrity of

the process if a party that doesn't like a decision or a process goes to the General Assembly to have the process changed or the decision reversed in statue. Alternatively, when the Commission receives recommendations for changes to CON rules, those proposed changes are posted on the MHCC website for public comment. In this manner, the Commission provides opportunity for both informal and formal public input before making changes to its rules. Commissioner Todd made a motion to approve the staff recommendation, which was seconded by Commissioner Krumm and unanimously approved. Commissioner Ontaneda-Bernales recused herself from consideration of this matter.

ACTION: SB 799 – Health Care Facilities – Certificate of Need – Hospitals – Staff Recommendation to Oppose, is hereby APPROVED.

- **SB 777 – Home Health Agencies – Certificate of Need and Licensing**

Ms. Stallings said SB 777 would establish a period of provision licensure for a limited number of new health health agencies. It further requires applicants for home health agency licensure to: participate in client satisfaction surveys, be federally certified, meet charity care requirements, and participate in Maryland Medicaid. Ms. Stalling said this legislation would also require the Department of Health and Mental Hygiene to adopt regulations that address: provisional licensure; acquisition rules; patient volume requirements; guidelines for competitive limited entry; and standards by which the Department can evaluate performance. The bill also removes home health agencies from certificate of need and sunsets after five years so there is an opportunity to evaluate the impact. Staff recommended supporting SB 777 since it is consistent with the Commission's December 2008 report, "An Alternative Approach to the Regulation of Home Health Agencies in Maryland" and applied the recommendations of the report. Commissioner Todd made a motion to approve the staff recommendation, which was seconded by Commissioner Moore and unanimously approved. Commissioner Ontaneda-Bernales recused herself from consideration of this matter.

ACTION: SB 777 – Home Health Agencies – Certificate of Need and Licensing – Staff Recommendation to Support, is hereby APPROVED.

- **HB 715 – Home Health Agencies – Certificate of Need**

Ms. Stallings said that HB 715 repeals the requirement that a Certificate of Need be obtained for a home health agency. Staff recommended supporting HB 715 with an amendment to repeal HB 715 in its entirety and replace with language from SB 77, which is consistent with the Commission's December 2008 report, "An Alternative Approach to the Regulation of Home Health Agencies in Maryland." Commissioner Moore made a motion to approve the staff recommendation, which was seconded by Commissioner Todd and unanimously approved. Commissioner Ontaneda-Bernales recused herself from consideration of this matter.

ACTION: HB 715 – Home Health Agencies – Certificate of Need – Staff Recommendation to Support with Amendment, is hereby APPROVED.

- **SB 752 – Certificate of Need Requirements – Health Care Facilities Other than Home Health Agencies and Hospices – Repeal**

Ms. Stallings said SB 752 repeals the Certificate of Need process for health care facilities other than home health agencies and hospice. Staff recommended opposing SB 752 because modifying the Certificate of Need process can decrease regulatory burden while achieving both cost control and improvements in quality. This incremental reform is preferable to the abolition of Certificate of Need requirements. Commisioner Moore made a motion to approve the staff recommendation, which was seconded by

Commissioner Krumm and unanimously approved. Commissioner Ontaneda-Bernales recused herself from consideration of this matter.

ACTION: SB 752 – Certificate of Need Requirements – Health Care Facilities Other than Home Health Agencies and Hospices – Repeal – Staff Recommendation to Oppose, is hereby APPROVED.

- **HB 706/SB 744 – Electronic Health Records – Regulation**

Dr. Cowdry said HB 706 would require the Commission to issue regulations regarding payments to providers by carriers intended to support the adoption of electronic health records that will also connect with a health information exchange, and regarding certification of EHRs, among other things. Under the bill, providers who have not adopted certified EHRs will cease to be paid for services by state regulated carriers, the state employee health plan, and Medicaid after 2014. Staff recommended supporting HB706/SB752 with amendments that would change the required regulations, move Medicaid's requirement to uncodified language to give the program the necessary flexibility to make use of Medicaid funds for EHRs provided by HR 1 (the federal recovery act) and provide for payment incentives prior to 2014 and penalties thereafter. This legislation aligns state payers with the approx \$15-18 billion in Medicare and Medicaid adoption incentives in the federal law. Commissioner Falcone made a motion to approve the staff recommendation, which was seconded by Commissioner Krumm and unanimously approved. Commissioner Ontaneda-Bernales recused herself from consideration of this matter.

ACTION: HB 706/SB 744 – Electronic Health Records – Regulation – Staff Recommendation to Support with Amendment, is hereby APPROVED.

- **HB 735 – State Personnel – Employment Categories and Special Appointments**

Ms. Stallings said this legislation would repeal provisions of law that designate certain positions and employees as being in the executive service or management service or as special appointments in the State Personnel Management System. Staff recommended opposing HB 735 because it would terminate the Commission's authority to hire using the special appointment mechanism. The Commission originally sought this authority for at-will appointments for two related reasons: (1) to improve our ability to offer reasonable compensation in the face of intense competition from the private sector for the technical, analytical, and professional expertise required, and (2) to assure that our hiring process is efficient, allowing us to advertise, recruit, interview, rank, and offer employment relatively rapidly to highly qualified applicants. Commissioner Falcone made a motion to approve the staff recommendation, which was seconded by Commissioner Krumm and unanimously approved.

ACTION: HB 735 – State Personnel – Employment Categories and Special Appointments – Staff Recommendation to Oppose, is hereby APPROVED.

- **HB 840 – Maryland Health Care Commission – Certificates of Need – Extension**

Dr. Cowdry said would require Commission to grant an extension of time to the holder of a Certificate of Need on showing of good cause and to renew the extension of time on a continued showing of good cause by the holder. Staff recommended opposing HB 840 because this bill would alter procedural rules governing performance requirements for approved Certificate of Need project. Commissioner Falcone made a motion to approve the staff recommendation, which was seconded by Commissioner Krumm and unanimously approved. Commissioner Ontaneda-Bernales recused herself from consideration of this matter.

ACTION: HB 840 – Maryland Health Care Commission – Certificates of Need – Extension - Staff Recommendation to Oppose, is hereby APPROVED.

ITEM 7.

PRESENTATION: Health Insurance Coverage Report in Maryland through 2007

Linda Bartnyska, Chief, Cost and Quality Analysis, presented the Health Insurance Coverage Report. Ms. Bartnyska provided an overview of the report's content. She said the report contains information on the characteristics of Maryland's uninsured nonelderly residents, as well as the coverage rates for many subsets of the population, including children, young adults, workers, and racial and ethnic minorities. Ms. Bartnyska said, as in the larger population, the coverage rates for most subgroups did not change from 2004-2005 to 2006-2007. She noted that the demographic composition of the state's nonelderly uninsured shifted slightly with respect to income, race/ethnicity, and employment. Ms. Bartnyska pointed out the age, education attainment, and family income are closely associated with being uninsured. She also discussed how Maryland's uninsured numbers differ from the national averages and how economic and demographic characteristics of Maryland's uninsured are different.

ITEM 11.

ADJOURNMENT

There being no further business, the meeting was adjourned at 4:00 p.m., upon motion of Commissioner Todd, which was seconded by Commissioner Conway and unanimously approved.